

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

SHERIFF MEWS, LLC  
Respondent

Case Nos.: I-00-10418  
I-00-11013

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER**

**I. Introduction**

On November 17, 2000, the Government served a Notice of Infraction (No. 00-10418) upon Respondent Sheriff Mews, LLC, alleging that it violated 21 DCMR 506.2 by failing to comply with an approved erosion and sedimentation plan. The Notice of Infraction alleged that the infraction occurred in the 1000 block of 50<sup>th</sup> Place, N.E. on August 30, 2000, and sought a fine of \$100.00.

Respondent failed to file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715). Accordingly, this administrative court issued an order on December 27, 2000, finding Respondent in default, assessing a penalty of \$100 pursuant to D.C. Code § 6-2704(a)(2)(A) and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-2712(f).

The Government then served a second Notice of Infraction, 00-11013, on January 3, 2001. Respondent once again failed to respond within twenty days of service. Accordingly, this administrative court issued a Final Notice of Default, holding Respondent in default for failure to answer the second Notice of Infraction and assessing total penalties of \$200.00 pursuant to D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B). The order also designated March 14, 2001 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at the hearing in order to contest liability, fines, penalties or fees. Enclosed with the Final Notice of Default were copies of both the first and the second Notices of Infraction.

At the March 14 hearing, the inspector who issued the Notices of Infractions appeared and testified for the Government, and I admitted Petitioner's Exhibits ("PX") 100-109 into evidence. Respondent did not appear at the hearing.

Based upon the testimony at the hearing, my evaluation of the credibility of the Government's witness, the documents admitted into evidence, and the entire record in this case, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

1. The property at issue is a construction site owned by Respondent located in the 1000 block of 50<sup>th</sup> Place, N.E., at the corner of Sheriff Road (the "Sheriff Road site").

2. In two previous cases, Respondent has been found liable for violating 21 DCMR 502.1 by engaging in land disturbing activities at the Sheriff Road site without a permit. *DOH v. Sheriff Mews LLC*, No. I-00-10009, OAH Final Order (September 8, 2000); *DOH v. Sheriff Mews, LLC*, No. I-00-10124, OAH Final Order (September 8, 2000). By August 30, 2000, Respondent had obtained the necessary permit, which included an approved erosion and sedimentation plan. PX-108. Among other things, the plan required Respondent to install a silt fence around the perimeter of the construction site.
3. On August 30, 2000, the silt fence required by the plan was not properly installed at the Sheriff Road site.
4. As indicated on the District of Columbia tax bill for the property at issue (PX-101-101A), Respondent's business address is 1345 14<sup>th</sup> Street N.W., Washington, D.C. 20005.
5. The Notices of Infraction in this matter were served on Respondent at 1345 14<sup>th</sup> Street, N.W. by certified mail on November 17, 2000 and January 3, 2001, as evidenced by the certificates of service signed by the Government's representative.
6. Respondent actually received the Notices of Infraction at the 14<sup>th</sup> Street address, as evidenced by the certified mail receipts that are in evidence. PX-103A, PX-105A.
7. This administrative court's order of December 27 was sent by first class mail to Respondent at the 14<sup>th</sup> Street address and to Marvin Gitleson at 4201 Cathedral Avenue, N.W., Washington, D.C. 20016. The record in the prior cases involving Respondent, of which I take judicial notice, indicates that Mr. Gitleson is

- Respondent's registered agent. Neither copy was returned to the Clerk by the Postal Service.
8. This administrative court's order of February 15, 2001 was sent by first class mail to Respondent and Mr. Gitleson at the above-mentioned addresses. Neither copy was returned to the Clerk by the Postal Service.
  9. No explanation has been offered for Respondent's failure to respond to the Notices of Infraction.

### **III. Conclusions of Law**

1. Respondent had adequate notice of the charges and of the hearing date in this matter as mandated both by the Due Process Clause and by applicable statutes. D.C. Code §§ 1-1509(a); 6-2712(b). The evidence shows that Respondent actually received the Notices of Infraction at its business address. The December 27<sup>th</sup> and February 15<sup>th</sup> orders were mailed to Respondent at its business address and to the address of its registered agent. None of those mailings has been returned by the Postal Service. This evidence is sufficient to demonstrate proper notice. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).
2. Section 506.2 provides that a notice to comply shall be served upon any permittee if an inspection reveals that the permittee has failed to comply with an approved soil and sedimentation plan. The Civil Infractions Fine Schedule classifies a violation of §506.2 as a Class 3 infraction, subject to a fine of \$100.00 for the first offense, and

describes the violation as “failure to comply with an approved soil and sedimentation plan.” 16 DCMR 3234.2(c). Section 3234.2(c), therefore, authorizes the imposition of a fine in the circumstances described in § 506.2, *i.e.*, if a permit holder has not complied with an approved soil and sedimentation plan. *DOH v. Crystal Pool, Inc.*, No. I-00-10224, OAH Final Order at 6-7 (January 29, 2001).

3. Because it did not install the required silt fences, Respondent did not comply with its approved soil and sedimentation plan and is therefore liable for the \$100.00 fine prescribed by 16 DCMR 3234.2(c).
4. Respondent failed to answer both the first and the second Notices of Infraction without demonstrating sufficient cause for those failures, and therefore is liable for statutory penalties of \$200.00 in addition to the civil fine prescribed for the violation. D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B).

#### IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2001:

**ORDERED**, that Respondent shall pay a total of **THREE HUNDRED DOLLARS (\$300.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/      **7/12/01**

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John P. Dean  
Administrative Judge